

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BICH AN THI NGUYEN,

Plaintiff and Respondent,

v.

TUAN NGUYEN,

Defendant and Appellant.

G054555

(Super. Ct. No. 16V000883)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, M. Marc Kelly and Layne H. Melzer, Judges; and Renee E. Wilson, Temporary Judge (pursuant to Cal. Const., art. VI, § 21). Appeal dismissed.

Anthony Nguyen, in pro. per., for Defendant and Appellant.

Walter Emil Teague III for Plaintiff and Respondent.

*

*

*

Tuan Nguyen, also known as Anthony Nguyen, appeals from a restraining order the trial court entered against him on behalf of his former fiancée and housemate, Bich An Thi Nguyen (Bich An), on August 10, 2016, and from the subsequent denials of reconsideration motions that Nguyen brought before three different superior court judges.¹ As we explain, Nguyen’s appeal is untimely because an order denying a motion for reconsideration is not itself an appealable order. Nguyen’s challenge to the sufficiency of the evidence to support the original, underlying August 2016 restraining order therefore fails.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2016, Bich An obtained a temporary restraining order against Nguyen based on her allegations that Nguyen, her former fiancé, began to behave erratically, became physically violent toward her, and made death threats against her former boyfriend. To protect herself, Bich An began to break off the relationship “slowly” because petitioner told her he was a lawyer and had showed her a semi-automatic pistol he carried under his coat. Amidst her attempts to disentangle herself from Nguyen, he sent private and personal photos taken from her computer without permission to her family. As proof of Bich An’s supposed “terrorist” activities, Nguyen also threatened to send private photos of her and a previous boyfriend of Arabic descent to the FBI. In early April 2016, a stranger attempted to open Bich An’s front door, and when she looked through her window, she saw the man taking pictures of her home.

In May 2016, Nguyen responded by alleging that Bich An locked him out of a room he rented from her and that she refused to return his laptop computer. He

¹ Because the parties share the same surname, we refer to Bich An Thi Nguyen by her two first names for clarity and ease of reference; we intend no disrespect by the informal designation.

denied committing any violence against her and denied owning a firearm. He claimed he brought a locksmith to Bich An's home because she changed the locks on him.

Beginning in June 2016, Nguyen filed four ex parte applications for a restraining order against Bich An, alleging she locked him out of the home they shared, wrongly demanded money from him, and pepper-sprayed him. According to Nguyen, she also threatened to have her Palestinian "Jihadist" boyfriend kill him if he did not leave her alone. Nguyen claimed the former boyfriend contacted him through the Internet and threatened to kill him with an "AK-47." Additionally, Nguyen asserted he suffered physical and financial injuries when Bich An scratched him with her nails, threw her makeup bag at him, and forged over \$5,000 worth of checks belonging to him. The trial court denied Nguyen's ex parte requests pending a hearing.

On August 10, 2016, the trial court held a hearing on the parties' dueling requests for restraining orders against each other, including to make Bich An's temporary order against Nguyen permanent. In a hearing that spanned nearly a whole court day, both parties testified and introduced supporting evidence, and Nguyen's mother and godparents also testified on his behalf. At the conclusion of the hearing, the court found Bich An's testimony credible, in particular that Nguyen hit her, shoved her, and sent out pictures of her without her permission. The court granted Bich An's request for a permanent restraining order, effective through August 10, 2021, and denied Nguyen's request for a restraining order against Bich An. The court, however, expressly directed Bich An "not to initiate contact with the restrained party, Mr. Nguyen." In granting the restraining order, the court also credited Bich An's testimony that Nguyen had a gun and directed Nguyen to "turn in, sell or store" the weapon.

Nguyen did not initially appeal, but instead filed a writ petition challenging the restraining order for lack of substantial evidence; a panel of this court summarily denied the petition in September 2016 (G053946). Subsequent proceedings in the trial

court involved Nguyen's attempts to overturn the restraining order through various motions filed before different judges, each of which the trial court denied, as follows:

First, on October 19, 2016, the original trial court denied Nguyen's motion for reconsideration or to vacate or otherwise set aside the restraining order based on criminal charges filed against Bich An. Bich An asserts in her appellate brief that Nguyen orchestrated those charges and they were ultimately dismissed. In any event, the trial court denied Nguyen's reconsideration motion, explaining that "the fact that a criminal case has been filed against Miss Nguyen is not grounds to set aside the Court's findings in this matter."

Second, in early October 2016, Nguyen obtained a temporary restraining order (TRO) against Bich An from a trial court commissioner, pending a hearing on October 26, 2016. Nguyen obtained the TRO through an ex parte application without notice to Bich An, and apparently did not inform the trial court of the earlier August 10, 2016 hearing. Once the court learned the matter already had been tried at that earlier hearing, the court entered an order on October 26, 2016, stating that "res judicata applies." The court therefore declined to consider Nguyen's request for a restraining order in his favor, and instead ordered the matter off calendar.

Third, on October 28, 2016, two days after the trial court's res judicata determination, Nguyen refiled his request for a restraining order in a different court. At a hearing on December 29, 2016, the court denied the motion, explaining in its minute order that the "request for reconsideration . . . is procedurally improper. Also, this Court finds no new facts or laws to support [the] request."

Nguyen now appeals, designating the trial court's orders entered on (1) August 10, 2016, (2) October 19, 2016, (3) October 26, 2016, and (4) December 29, 2016, as the subjects of his appellate challenge.

Nguyen challenges both the trial court's initial order entering a restraining order against him and the court's orders denying his three subsequent attempts to overturn the order through motions for reconsideration that he claimed presented new evidence.

DISCUSSION

The rules of law applicable to this appeal are the same as those discussed in a related appeal (G055022). We incorporate that discussion by reference herein. As a bedrock principle of appellate practice, the appellant must demonstrate an order or judgment is appealable. (Cal. Rules of Court, rule 8.204, subd. (a)(2)(B); *In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1496, fn. 5.) Nguyen makes no effort to do so.

A domestic violence restraining order, as the trial court entered here on August 10, 2016, ordinarily is an appealable order. (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 332.) By statute, however, an order denying a motion for reconsideration is *not* separately appealable. (Code Civ. Proc., § 1008, subd. (g).) It may be challenged in a proper appeal from the underlying judgment or order for which the movant sought reconsideration (*ibid.*), but that presumes the appellant timely appealed the underlying judgment or order.

Here, Nguyen filed his first motion for reconsideration of the trial court's August 10, 2016 restraining order on August 18, 2016. As noted, he later filed what amounted to two additional motions for reconsideration. But the governing rules provide that the requisite time in which to file an appeal of an underlying order or judgment for which the movant seeks reconsideration is "90 days after the *first* motion to reconsider is *filed*." (Cal. Rules of Court, rule 8.108(e)(2), italics added.) Because Nguyen filed his first motion for reconsideration on August 18, 2016, and did not file his notice of appeal of the underlying restraining order until more than 160 days later—on January 27, 2017—Nguyen's appeal is untimely. (*Ibid.*)

This is true regardless of how Nguyen styled his motion for reconsideration. Like a motion for reconsideration, a motion to vacate the underlying judgment, as Nguyen filed here on August 18, 2016, requires that an appeal from that underlying judgment or order must be filed within “90 days after the *first* notice of intention to move—or motion [to vacate]—is *filed*.” (Cal. Rules of Court, rule 8.108(c)(2), italics added.) As noted, Nguyen filed his notice of appeal more than 160 days after filing his August 18, 2016 motion to reconsider, vacate or set aside the underlying restraining order—far exceeding the 90-day period in which to appeal. Consequently, his appeal is untimely and must be dismissed. (Cal. Rules of Court, rule 8.104(b); *Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 504.)

DISPOSITION

The appeal is dismissed as untimely. Respondent is entitled to her costs on appeal.

GOETHALS, J.

WE CONCUR:

FYBEL, ACTING P. J.

THOMPSON, J.